

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 5
Mtg. Date October 20, 2015
Dept. Development Services

Item Title: Interim City Engineer and Engineering Services Agreement

Staff Contact: Carol Dick, Development Services Director

Recommendation:

Adopt a resolution (**Attachment A**) approving an Interim City Engineer and Engineering Services agreement (**Exhibit "A"**) with Rick Engineering Company.

Item Summary:

The vacancies in the Engineering Division have created an emergency need to augment staff. In June 2015, the Interim City Engineer left her post at a time when there was an existing vacancy in the department. After her departure, the City Engineer and Associate Engineer full time positions were vacant. The City initially contracted Rick Engineering with a limited scope of work and time that could be authorized by staff in an effort to preserve important projects and to continue to serve the community. These agreements are due to expire. The services are needed for at least the next six coming months as the new City Manager becomes accustomed to Lemon Grove and decides how the organization should and can be structured. In order to continue to adequately address critical development projects and schedules, staff recommends that Rick Engineering continue as the Interim City Engineer and provide staff augmentation as necessary.

The attached agreement includes the City Council approved job description for the City Engineer position with one addendum (consistency with the Government Code) and is provided the ability to request additional staffing augmentation from Rick Engineering. The agreement also specifically includes a Project Manager for the Lemon Grove Realignment Project, provided it continues to be a viable project.

Fiscal Impact:

The fully burdened amounts currently allocated for the City Engineer and Associate Engineer positions in the FY 2015-2016 General Fund are approximately \$237,000. The City has expended \$30,000 for Engineering Services to date and with the approval of this contract, there is appropriate funding in the budget.

Environmental Review:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

A. Resolution

Attachment A

RESOLUTION NO. 2015 - _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING AGREEMENTS WITH RICK ENGINEERING FOR INTERIM CITY ENGINEER AND ENGINEERING SERVICES IN THE CITY OF LEMON GROVE

WHEREAS, the previous Interim City Engineer departed the City on June 22, 2015; and

WHEREAS, the City Engineering Division was not fully staffed prior to her departure;
and

WHEREAS, a fully staffed Engineering Division is essential for ensuring a timely, safe and professional response to the Community and to preserve commitments to public and private projects; and

WHEREAS, Rick Engineering Company has served for the past few months as the Interim City Engineer and Project Manager of the Lemon Grove Realignment project; and

WHEREAS, Rick Engineering Company has agreed to the attached professional agreement terms and scope of work as presented in (**Exhibit "A"**); and

WHEREAS, staff believes that Rick Engineering has and will continue to provide excellent Interim City Engineer and staff augmentation services.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves an agreement and scope of work (**Exhibit "A"**) with Rick Engineering Company; and
2. Authorizes the City Manager or designee to execute and manage all contractual documents.

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Attachment A

**AGREEMENT
BY AND BETWEEN
THE CITY OF LEMON GROVE
AND
RICK ENGINEERING COMPANY**

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the "CITY"), and RICK ENGINEERING COMPANY, a professional engineering firm (the "CONTRACTOR").

R E C I T A L S

WHEREAS, the CITY desires to employ a CONTRACTOR to provide temporary professional engineering services.

WHEREAS, the CITY has determined that the CONTRACTOR is a professional engineering firm and is qualified by experience and ability to perform the Interim City Engineer and supporting Engineering services desired by the CITY, and the CONTRACTOR is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONTRACTOR.** The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONTRACTOR represents that all services required hereunder will be performed directly by the CONTRACTOR or under direct supervision of the CONTRACTOR.

2. **SCOPE OF SERVICES.** The CONTRACTOR will perform various engineering tasks annotated in the attached Exhibit "A".

The CONTRACTOR shall be responsible for providing an Interim City Engineer to the City to perform various engineering tasks consistent with the current job description and Engineering Support Services on an as-needed basis consistent with the proposal included in Exhibit A. The engineer will work portions of two days per week based out of City Hall and provide as-needed staff augmentation whether in City Hall or remotely, City of Lemon Grove, 3232 Main Street, Lemon Grove, CA 91945 for a duration not to exceed 6 months.

Attachment A

The CITY may unilaterally, or upon request from the CONTRACTOR, from time to time reduce or increase the Scope of Services to be performed by the CONTRACTOR under this Agreement. Upon doing so, the CITY and the CONTRACTOR agree to meet in good faith and confer for the purpose of negotiating a corresponding decrease or increase in the compensation associated with said change in services.

3. **PROJECT COORDINATION AND SUPERVISION.**

Carol Dick, Development Services Director hereby is designated as the Project Manager for the CITY and will monitor the progress and execution of this Agreement. The CONTRACTOR shall assign a single Project Director to act as the City Engineer to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONTRACTOR. Timothy W. Gabrielson,, Associate Principal thereby is designated as the Project Director and Interim City Engineer for the CONTRACTOR.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONTRACTOR shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work described in Exhibit "A" shall not exceed the base amount of \$186,000, without prior written authorization from the City's Project Manager. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit "A" as determined by the CITY.

The CONTRACTOR shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** The duration of this agreement will not exceed six months from the date it is executed by both parties.

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR for this Agreement, whether paper or electronic, shall become the property of the CITY for use with respect to this Agreement, and shall be turned over to the CITY upon completion of the Agreement, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY and CONTRACTOR thereby expressly waives and disclaims, any

Attachment A

copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONTRACTOR agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONTRACTOR's written work product for the CITY's purposes, and the CONTRACTOR expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONTRACTOR shall relieve the CONTRACTOR from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this Agreement, unless otherwise mutually agreed.

7. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint ventures with one another. Neither the CONTRACTOR nor the CONTRACTOR'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONTRACTOR and the CONTRACTOR's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONTRACTOR and its employees. Neither this Agreement nor any interest herein may be assigned by the CONTRACTOR without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONTRACTOR from employing or hiring as many employees, or subcontractors, as the CONTRACTOR may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONTRACTOR with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees except as herein set forth, and the CONTRACTOR expressly agrees not to represent that the CONTRACTOR or the CONTRACTOR's agents, servants, or employees are in any manner agents, servants or employees of the CITY, it being understood that the CONTRACTOR, its agents, servants, and employees are as to the

Attachment A

CITY wholly independent contractors and that the CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONTRACTOR, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONTRACTOR, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. **LICENSES, PERMITS, ETC.** The CONTRACTOR represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONTRACTOR represents and covenants that the CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONTRACTOR to practice its profession.

11. **STANDARD OF CARE.**

A. The CONTRACTOR, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONTRACTOR'S trade or profession currently practicing under similar conditions and in similar locations. The CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this agreement, the CONTRACTOR warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

C. The CONTRACTOR is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONTRACTOR has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONTRACTOR has notified the CITY otherwise, the CONTRACTOR warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONTRACTOR to use due diligence under this sub-paragraph will render the CONTRACTOR liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

Attachment A

12. **NON-DISCRIMINATION PROVISIONS.** The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONTRACTOR will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

13. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONTRACTOR certain confidential information to enable the CONTRACTOR to effectively perform the services to be provided herein. The CONTRACTOR shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONTRACTOR shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONTRACTOR, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONTRACTOR without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to the CONTRACTOR by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

The CONTRACTOR shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONTRACTOR shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONTRACTOR shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this Agreement. CONTRACTOR's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected

Attachment A

officials, officers, agents, and employees. CONTRACTOR's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONTRACTOR expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY 's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

15. **WORKERS' COMPENSATION.** The CONTRACTOR shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONTRACTOR under this Agreement.

16. **INSURANCE.** The CONTRACTOR, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this agreement, the following insurance policies:

☒ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all bodily injury and property damage arising out of its operation under this Agreement.

D. Workers' compensation insurance covering all of CONTRACTOR's employees.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. Said policies, except for the professional liability and worker's compensation policies, shall name the CITY and its officers, agents and employees as additional insureds.

G. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

H. Any aggregate insurance limits must apply solely to this Agreement.

Attachment A

I. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONTRACTOR does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

17. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

18. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA") before resorting to arbitration. The costs of mediation shall be borne equally by the parties.

19. **TERMINATION.** A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to the CONTRACTOR. During said 60-day period the CONTRACTOR shall perform all services in accordance with this Agreement.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by the CONTRACTOR in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONTRACTOR as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other

Attachment A

materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONTRACTOR's breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONTRACTOR; (2) a reorganization of the CONTRACTOR for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONTRACTOR.

20. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the CITY: Kathi Henry, Interim City Manager
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945-1701

To the CONTRACTOR: Timothy W. Gabrielson, Associate Principal
Rick Engineering Company
5620 Friars Road
San Diego, CA 92110-2596

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

Attachment A

21. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.**

During the term of this Agreement, the CONTRACTOR shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY OF LEMON GROVE. The CONTRACTOR also agrees not to specify any product, treatment, process or material for the project in which the CONTRACTOR has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONTRACTOR shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. The CONTRACTOR represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

☒ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONTRACTOR shall:

1. Go to www.fppc.ca.gov
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed contracts.

The CONTRACTOR shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONTRACTOR.

22. **MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

Attachment A

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

L. Any defense obligations under this indemnity provision are reimbursement provisions only, and reimbursement is equal to the proportionate liability of Engineer.

M. City acknowledges the services provided are for the benefit of and as if Engineer were acting in the position of the City. As such, to the extent any immunities the City may have to any claim, the City shall not object to Engineer also claiming such immunity.

Attachment A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF LEMON GROVE

RICK ENGINEERING COMPANY

(Corporation – signatures of two corporate officers)

(Partnership – one signature)

(Sole proprietorship – one signature)

By: _____

Date: _____

Kathi Henry

Interim City Manager

By: _____

(Name)

(date)

APPROVED AS TO FORM

By: _____

James P. Lough

City Attorney

By: _____

(Name)

(date)

Attachment A

EXHIBIT “A”

Scope of Work

A. Interim City Engineer

Continue to provide City Engineer consultation services for six months. This assumes providing 8-10 hours per week working at the City of Lemon Grove. The time estimate for this service is approximately 240 hours on a time and material basis. The overview of services is as follows:

Under the general direction of the Development Services Director - plan, organize, and direct the design and construction, of the City's street, drainage, and sanitation infrastructure, various engineering programs, subdivision map and improvement plans examination, transportation program; participates as a member of the City's management team; coordinate assigned activities with other department and outside agencies; and provide responsible and complex administrative support to the Public Works Director; and perform related work as required.

Representative Duties:

The following duties are typical for this position . Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

- Provide City Engineer services consistent with Government Code Section 66416.5 definition of “City Engineer” and Business and Professional Code § 6730.2. All work performed must meet current accepted engineering practices consistent with City, State and Federal regulations.
- Assume full management responsibility for all Engineering Division services and activities including engineering, the maintenance of streets, parks and public buildings, fleet maintenance, traffic engineering and safety and wastewater and storm drainage systems maintenance; recommend and administer policies and procedures.
- Manage the development and implementation of division goals, objectives, policies and priorities for each assigned service area.
- Assess and monitor work load, administrative and support systems, and internal reporting relationships; identify opportunities for improvement; direct and implement changes.
- Establish, within City policy, appropriate service and staffing levels; monitor and evaluate the efficiency and effectiveness of service delivery methods and procedures; allocate resources accordingly.
- Plan, direct, and coordinate, through subordinate level staff, the Engineering Division's work plan; assign projects and programmatic areas of responsibility; review and evaluate work methods and procedures; meet with key staff to identify and resolve problems.

Attachment A

- Select, train, motivate, and evaluate assigned personnel; provide or coordinate staff training; work with employees to correct deficiencies; implement discipline and termination procedures.
- Participate in the development and administration of the department budget; approve the forecast of funds needed for staffing, equipment, materials, and supplies; approve expenditures and implement budgetary adjustments as appropriate.
- Provide direction and supervisory assistance subordinates in their performance of project design, construction, compliance with codes and statutes, and maintenance of Public Works facilities; analyze and develop engineering criteria for design of infrastructure projects.
- Review, oversee and participate in approval of private development; ensure that subdivision plats, maps, surveys, parcel maps, and plans for lot grading and construction of public improvements comply with applicable statutes and meet established engineering standards.
- Direct the preparation, presentation, implementation, and maintenance of the City's Capital Improvement Program; oversee the design and construction of capital improvement projects; direct the preparation of maps, plans specifications, construction administration, contract documents and cost estimates of proposed projects; supervise and perform construction bid, and operation reviews.
- Evaluate and recommend professional engineering consultants and contracts.
- Meet with the public in small and large groups to discuss City public works policies, practices and problems; explain, justify and defend department programs, policies and activities; negotiate and resolve sensitive and controversial issues.
- Represent the City and Engineering Division to other departments, elected officials, outside agencies, and various local and regional committee and professional organizations; coordinate assigned activities with those of other departments and outside agencies and organizations.
- Provide staff assistance to the Public Works Director, City Manager and City Council; prepare and present staff reports and other necessary correspondence.
- Attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of public works administration and professional engineering; maintain departmental awareness of state-of-the-art developments in management and the fields of specialty review legislation affecting public works.
- Respond to and resolve difficult and sensitive citizen inquiries and complaints.
- Perform related duties as required.

Abilities/Skills/Knowledge:

- Ability to plan, organize and direct projects and programs in the following functional areas: engineering, streets and storm drains, sanitary sewers, related public works,

Attachment A

traffic systems and facilities maintenance;

- Ability to develop and implement comprehensive plans to satisfy the City's immediate and future needs for public works;
- Ability to evaluate safety needs and establish training programs;
- Ability to deal effectively with the Public Works Director, City Manager, City Council, public, developers, other City departments and public agencies in coordinating activities and resolving problems;
- Managerial and administrative ability;
- Extensive knowledge of civil engineering and land surveying practices, principles and design;
- Extensive knowledge of modern principles, methods, solutions, terminology, equipment and materials in the public works field;
- Thorough knowledge of laws and regulations relating to public works construction, operation and maintenance;
- Ability to communicate effectively, orally and in writing.

Experience: At least five years' experience in public engineering and managing public works projects and supervising construction, maintenance, professional, technical and administrative staff.

Education: Equivalent to at least a Bachelor's Degree with a major in civil engineering. Graduate study in civil engineering or public administration is desirable.

License or Certification: Registration as a Professional Civil Engineer in California is required; possession of a Licensed Land Surveyor Certificate is desirable.

Possession of or ability to obtain, prior to employment, a valid Class C California driver's license with a safe driving record.

Contacts and Relationships: Employee has contact with a variety of individuals representing public and private agencies and businesses. The employee is the primary City contact on division programs and serves as spokesperson for the City in matters pertaining to the division's policies, plans and objectives. Many of the contacts involve sensitive matters requiring exercise of the highest degree of discretion and good judgment.

Accountability: Employee is accountable for the efficiency of division personnel and quality of the services provided by the department. Employee handles major technical and administrative problems which may arise as a result of the department's activities. Innovative ideas for the improvement of services are expected.

Working Conditions: Work is performed mostly in office settings. Some outdoor work is required in the inspection of various land use developments, construction sites or public works facilities. The noise level in the work environment is usually quiet to moderate.

Attachment A

Physical Conditions: Shall possess the physical, mental and emotional ability to perform the essential duties of the position without the threat of hazard to self or others.

While performing the duties of this job, the employee is occasionally required to stand; walk; use hands to finger, handle, feel or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to sit, climb or balance; stoop, kneel, crouch or crawl; talk or hear; and smell. Hand-eye coordination is necessary to operate computers and various pieces of office equipment.

The employee must occasionally lift and/or move up to 25 pounds.

B. Capital Projects and Land Development Services

As the scope of work is unknown at this time, the following estimated budget can be utilized by the various tasks or project that may occur over the next 12 months. The scope of work and budget includes \$75,000 (approximately 400 hours) of engineering services for the various negotiated tasks that may arise.

As elements of consultant services become evident, a plan of action will be formulated to tackle the various projects and tasks to meet the needs and schedule of the City of Lemon Grove.

As the specific scope of work, schedule and deliverables is not defined at this time, the City Engineer will identify each task working closely with City staff or consultants and in particular, the City Manager, Development Services Director and Public Works Director to coordinate the tasks needed. Once identified and determined to be needed, a design team will be assembled with the right technical and management expertise for the task. A detailed task order of work, fee matrix with hours and schedule will be developed and submitted to the City for approval and a Notice to Proceed to be issued. The City Engineer or designated Rick Engineering Project Manager will track the task order, give weekly status reporting, have regular task communications and deliver the task on schedule and budget to the City Engineer and the City of Lemon Grove Management Team.

The following services that may be performed include, but are not limited to, the following:

Land Development/Capital Project Plan Review

- Engineering review and approval of Tentative Maps, Tentative Parcel, Final Maps, Parcel Maps, Record of Survey, Grading Plans, Building Permits (where required) and Improvement Plans for conformance with applicable City Design Standards, the California Subdivision Map Act, the Regional Water Quality Control Board Permit Requirements, and the Municipal Code Requirements. Prepare redline plan comments, written comments and recommendations relative to plan compliance to applicable codes and regulations.
- Coordinate plan reviews as applicable with various public utility companies and whose facilities encroach in the public right-of-way.
- Coordinate consultant reviews as applicable.
- Engineering review and approval of Hydrology and Hydraulic reports, Water Quality Technical Reports, Storm Water Pollution Prevention Plans, Geotechnical Reports and other technical reports as required for project approvals.

Attachment A

C. Bid and Construction Support Services

Upon specific and separate authorization by City, provide:

1. Contract administration during the course of construction of City capital improvement projects to include construction observation to assure compliance with contract documents, review and approval of contractor request for payment, and issuance of certificates of completion.
2. Review and respond/approve all construction submittals, RFI's and construction issues that may arise.
3. Assistance in bid process including bid opening, review of bids, and recommendation for contract award.
4. Engineering administrative support during construction phase of capital improvement projects.
5. Project surveying, as needed.

D. Lemon Grove Avenue Re-alignment Project Management

Permits and Authorizations:

The following are the anticipated tasks to assist the City of Lemon Grove (City) and NV5 to obtain approvals/permits from Caltrans, MTS, and the affected utility companies for the subject project. The City retains the right to cancel the Lemon Grove Avenue Re-alignment project at any time and to reassign these tasks as required.

- Project management (Assume 40 hours in addition to existing authorization):
 - Assist the City and oversee the City's design consultant, NV5, to obtain an Encroachment Permit from Caltrans District 11.
 - Assist the City and oversee the City's design consultant, NV5, to obtain approvals from MTS.
 - Assist the City and oversee the City's design consultant, NV5, to finalize and obtain approvals for the 20A Utility District.
 - Assist the City with pre-construction correspondence with Regional Water Quality Board project requirements.
- Attend Design Coordination Meetings with City and NV5 (up to ten (10) meetings, up to 2 hours each for 20 hours).
- Review the LGA Plans, Specifications, and Estimate (for portions of the project within City jurisdictional boundaries only) for City approval. It is anticipated that additional Rick Engineering Company staff will be utilized for the review process. This review includes civil design, traffic engineering (traffic control and traffic signing, striping and signals) and review of Drainage and Water Quality Reports. (This assumes 70 hours of an engineer's time).

Attachment A

Bid Support:

The following are the anticipated tasks to assist the City with the preparation of the Bid Package:

- Assist the City Construction Management and Inspection staff with potential Request for Information (RFI) submittals
- Attend meetings as required.

E. Other Services not specifically included in the Engineering tasks noted in “B” above

Upon specific and separate authorization by City, provide other services as listed below:

1. Urban design and planning.
2. GIS services.
3. Assessment engineering.
4. Flood control studies.
5. Landscape architecture.
6. Survey and mapping.
7. Other studies, investigations, and reports, as directed.
8. Traffic engineering.
9. Civil Design Services.

Fees and Billings

The following is an estimated labor fee for the above-described work. Labor charges for work shown below are on a time and material basis in accordance with the current Schedule of Hourly Rates (attached), not to exceed the following amounts without your prior authorization:

A.	Interim City Engineer	\$50,000
B.	Capital Projects and Land Development Services	\$75,000
C.	Construction Management	\$25,000
D.	Lemon Grove Re-Alignment	\$36,000
Total		<hr/> \$186,000

Any printing and miscellaneous processing fees are extra and not a part of this agreement. Also not included are any items not specifically referred to above.

Services to be complete by others

1. Geotechnical and Inspection Services
2. Environmental Services
3. Public Agency fees
4. Dry utility design services
5. Financial services
6. Additional Services Not Included in the Scope of Work